

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**WILLIAM MONTANO and
DORIS LUCERO,**

Plaintiff(s),

v.

No. CIV-06-0308 BB/ACT

**CHRISTMAS BY KREBS
CORPORATION,**

Defendant(s).

**DEFENDANT'S MOTION TO EXCLUDE OR LIMIT THE USE OF PLAINTIFFS'
EXPERT'S REPORT**

Defendant Christmas by Krebs Corporation, by and through its attorneys, Noeding & Jarrett, A Professional Corporation, pursuant to Fed. R. Civ. Evid. 702 and the legal standard provided by *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 589 (1993) and its progeny, respectfully requests that this Court Exclude or Limit the Use of Plaintiff's Expert's Report. Defendant's Memorandum in Support of its Motion to Exclude or Limit the Use of Plaintiff's Expert's Report is submitted concurrently herewith.

The Plaintiffs' only evidence regarding their request for back pay and lost benefit damages is an expert report authored by Dwight Steward, Ph.D. Dr. Steward's report contains several omissions of fact that materially overstate his estimates of the Plaintiffs lost earnings and benefits. Because of these errors and omissions, Dr. Steward's report does not meet the requirements of Fed. R. Evid. 702 or the *Daubert* standard. Dr. Steward's report should not be admitted into evidence at trial and thus cannot be used in opposition to a motion for summary

judgment. Alternatively, should this Court choose to allow Dr. Steward's report to be utilized by the Plaintiffs in this case, its use, and the associated damages estimates, should be limited.

WHEREFORE, Defendant Christmas by Krebs Corporation respectfully requests that the Court limit or exclude the report of Dwight Steward, Ph.D., and for such other relief as the Court deems just and proper.

Respectfully submitted,

NOEDING & JARRETT,
A Professional Corporation

By: /s/ James L. Cook

Danny Jarrett, Esq.

James L. Cook, Esq.

4300 San Mateo Blvd. NE, Ste. B260

Albuquerque, NM 87110

P: 505-878-0515

F: 505-878-0398

ATTORNEYS FOR CHRISTMAS BY KREBS

We hereby certify that we electronically filed the foregoing pleading through the CM/ECF system on May 14, 2007, which caused the following counsel to be served by electronic means, as documented on the Notice of Electronic filing:

Christopher T. Saucedo, Esq.

csaucedo@silvalaw.org

Arlyn G. Crow, Esq.

acrow@silvalaw.org

Attorneys for Plaintiffs William Montano
and Doris Lucero

Danny W. Jarrett, Esq.

jarrett@nm-law.com

James L. Cook, Esq.

jlcook@nm-law.com

Attorneys for Defendant Christmas by Krebs
Corporation

NOEDING & JARRETT,
A Professional Corporation

By: /s/ James L. Cook